IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 9194 of 2005

Between:

1. Bikkavolu Mahalingam, S/o late Rajeswara Rao, Aged 52 years, D.No.7-2-1, Rangireeju street, Vizianagaram.

2. Bikkavolu Siva Krishna, S/o late Rajeswara Rao, Aged 47 years, D.No. 7-2-1, Rangireeju street, Vizianagaram.

3. Bikkavolu Vishnu Priya Devi, W/o late Rajeswara Rao, Aged 70 years, D.No.7-2-1, Rangireeju street, Vizianagaram

4. Surabhi Kasi Jagannadha Rao, S/o Lae Ramayya, Aged 85 years, R/o D.No.15-2-36, M. G. Road, Vizianagaram.

..... PETITIONERS

AND

1. The Commissioner, Vizianagaram Municipality, Vizianagaram.
2. The Town Planning Officer, Vizianagaram Municipality, Vizianagaram.
3. The District Collector, Vizianagaram.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring

the action of the respondent authorities in demolishing the petitioners' building bearing Door Nos.7-6-1, 7-6-2, 7-6-3 & 15-2-36, with Assessment Nos.1093007372, 1093007392, 1093007394 and 1093020714 situated at M.G. Road, Vizianagaram Municipality, Vizianagaram District, without payment of any compensation or land acquisition proceedings or without any notice to the petitioners for expansion of the M.G. Road as arbitrary, illegal, null and void and contrary to the Article 300 (A) of the Constitution of India and against the norms of public policy and principles of natural justice and issue consequential direction directing the respondent authorities to follow the due process of law after deciding the encroachments on either side of the expansion on the basis of 1926 master plan under the Land Acquisition Act or any other such Act as applicable.

Counsel for the Petitioners: MR.VENKATESWARA RAO GUDAPATI

Counsel for the Respondent Nos.1 and 2 : Mr.S.NAGESWARA REDDY, ADVOCATE.

Counsel for the Respondent No.3: GP FOR MUNCIPAL ADMN. & URBAN DEV.

This Court at the admission stage made the following:

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O R D E R:

Heard the learned counsel for both the parties.

The petitioners seek a Writ of Mandamus declaring the action of the respondent authorities in demolishing the petitioners' buildings bearing Nos.7-6-1, 7-6-2, 7-6-3 & 15-2-36, with Assessment Nos.1093007372, 1093007392, 1093007394 and 1093020714 situated at M.G. Road, Vizianagaram Municipality, Vizianagaram

District, without following due process of law for the purpose of road widening work, as arbitrary and illegal.

It is represented by the learned counsel appearing for both parties that the issue involved in this writ petition is squarely covered by a decision of this Court in W.P. No. 21198 of 1997 and batch, dated 03-02-1998, wherein the Division Bench while considering an identical question, issued guidelines as under:

> *"1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.*
>
> 2. *If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.*
>
> 3. *In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.*
>
> 4. *If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.*

5. *In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.*

6. *If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures."*

The writ petition is accordingly disposed of directing the respondent not to demolish the structures in question without following the guidelines issued by the Division Bench in common order dated 03-02-1998 in W.P. No. 21198 of 1997 and batch. No costs.

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(**G. ROHINI, J**)

Date: 21-04-2005

ghn

1 The Commissioner, Vizianagaram Municipality, Vizianagaram.

2 The Town Planning Officer, Vizianagaram Municipality, Vizianagaram.

3. The District Collector, Vizianagaram.

4. Two CCs to the Government Pleader for Municipal Administration and Urban Development , High Court of A.P., Hyderabad. (O.U.T.)

5. Two CD copies.

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.9194 OF 2005

OPERATIVE PORTION (BY WIRE):

The writ petition is accordingly disposed of directing the respondent not to demolish the structures in question without following the guidelines issued by the Division Bench in common order dated 03-02-1998 in W.P. No. 21198 of 1997 and batch. No costs.

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(**G. ROHINI, J**)

Date: 21-04-2005

Note:

Issue wire at party's costs.

Please send the bundle to the Court Masters Section after dispatch of the wire order.

B/o

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